HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 29280 OF 1997

Between:

G.S. Ramakrishna

… Petitioner

and

The Zonal Manager, Indian Bank

… Respondent

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.29280 OF 1997

ORAL ORDER:

While Section 10 (1) (b) (i) of the Banking Regulation Act, 1949 (for short 'the Act') prohibits a banking company from continuing in employment any person, who has been convicted by a criminal court of an offence involving moral turpitude, the question which arises for consideration is whether this prohibition would necessitate imposition of the punishment of dismissal from service and whether such a punishment can be imposed without putting the employee concerned on notice and without assigning reasons therefor?

Facts in brief are that the petitioner, a clerk in the respondent-bank, was placed under suspension on 30.1.1996. He was issued a charge-memo on 15.2.1996 for misappropriation of funds, falsification of accounts etc. Simultaneously, on the basis of a complaint, criminal proceedings were also instituted by the

CBI and C.C.No.4 of 1996 was filed before the Special Judge for CBI Cases, Visakhapatnam, for offences punishable under Sections 120, 409, 420 and 477 of the Indian Penal Code, r/w Sections 13 (1) (C) and (D) and Section 13 (2) of the Prevention of Corruption Act, 1988. On being found guilty of the charges, the petitioner was convicted on 30.9.1997 and sentenced with Rigorous Imprisonment for a period of 3 years and with a fine of Rs.500/- and in default with Simple Imprisonment of 30 days. Even before the order of dismissal dated 25.10.1997 was served on the petitioner, the petitioner approached this court by way of the present writ petition and upon service of the order of dismissal dated 25.10.1997, WPMP No.40001 of 1997 was filed seeking an amendment to the prayer to include a challenge to the said order dated 25.10.1997. It is the specific case of the petitioner that, even after the impugned order of dismissal dated 25.10.1997 came to be passed, the enquiry officer had called upon the petitioner, vide letter dated 11.11.1997, asking him to participate in the departmental enquiry to be held to inquire into the charges levelled against him.

Sri K. Gopala Krishna Murthy, learned counsel for the petitioner, while fairly conceding that the petitioner cannot be continued in employment in view of the embargo under Section 10 (1) (b) (i) of the Act, would nonetheless submit that even in this

limited area a discretion is vested with the competent authority to impose a lesser punishment than that of dismissal from service; such as discharge for which the Sastry Award and Bipartite settlement, both contemplate the convicted employee being put on notice and of being given an opportunity of being heard. Learned counsel would contend that the Act by itself does not require imposition of the punishment of dismissal from service and only prohibits a banking company from continuing in service an employee who has been convicted of an offence involving moral turpitude. According to the learned counsel while dismissal from service would disentitle the petitioner of several of his terminal benefits, imposition of discharge would, while complying with the requirement of Section 10 (1) (b) (i) of the Act, would entitle him to be paid certain terminal benefits which the petitioner would not be entitled to if he were dismissed from service.

Sri P.R. Prasad, learned counsel for the respondent-bank, would contend that imposition of the punishment of dismissal from service, under Clause 19.6 (a) of the Bipartite settlement (for short 'the Settlement') for an offence involving moral turpitude, does not necessitate putting the petitioner on notice since the very punishment under Clause 19.6 (a) is "dismissal from service without notice". Learned counsel would submit that the requirement of an employee being given an opportunity of being

heard, as regards the nature of proposed punishment, is under Clause 19.12 of the Settlement, which is the procedure to be followed in cases where disciplinary action is taken against an employee and since the punishment imposed in the present case is for his conviction by a criminal court for an offence involving moral turpitude, which conviction has attained finality by the order of the Supreme Court in Criminal Appeal No.427 of 2002 dated 1.4.2002, there was no obligation on the respondent-bank to continue with a departmental enquiry and the competent authority was entitled straightaway to impose the punishment of dismissal from service under Clause 19.6 (a) of the Settlement.

Before examining the rival contentions, it is necessary to take note of the relevant provisions in this regard.

Section 10 (1) of the Act reads thus:

10. Prohibition of employment of managing agents and restrictions on certain forms of employment:- (1) No banking company,--

(a) shall employ or be managed by a managing agent ; or

(b) shall employ or continue the employment of any person,--

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by Criminal Court of an offence involving moral turpitude ; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or

of a share in the profits of the company."

Para 521 (1), (2) and (5) of the Sastry Award read thus:

"521. A person against whom disciplinary action is proposed or likely to be taken should, in the first instance, be informed of the particulars of the charge against him; he should have a proper opportunity to give his explanation as to such particulars. Final orders should be passed after due consideration of all the relevant facts and circumstances. With this object in view, we give the following directions:--

(1) By the expression "offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.

(2) (a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted; and in such a case he may also be suspended.

(b) If he be convicted he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in sub-paragraph (5) below."

"521 (5):- An employee found guilty of gross misconduct may;

(a) be dismissed without notice, or
(b) be warned or censured, or have an adverse remark entered against him, or
(c) be fined, or
(d) have his increment stopped, or
(e) have his misconduct condoned and be merely discharged."

Clauses 19.2, 19.3, 19.6, 19.11 and 19.12 of the Settlement

read thus:

19.2. By the expression "offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of Law.

19.3. (a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below."

"19.6. An employee found guilty of gross misconduct may:

(a) be dismissed without notice; or
(b) be warned or censured, or have an adverse remark entered against him; or
(c) be fined; or
(d) have his increment stopped; or
(e) have his misconduct condoned and be merely discharged."

"19.11. When it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days thereof."

"19.12. The procedure in such cases shall be as follows:-

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the

enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witness and produce other evidence in his defence. He shall also be permitted to be defended --

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed:

OR

(ii) at the request of the said union by a representative of the state federation or all India Organisation to which such union is affiliated;

OR

(ii) with the Bank's permission, by a lawyer.

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him. (emphasis supplied)

(b) Pending such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowance, etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances, that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such

> misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances in lieu of such notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action."

While Para 521 (2) (b) of the Sastry Award and Clause 19.3 (b) of the Settlement of the respondent-bank does seem to indicate that an employee, who has been convicted of an offence involving moral turpitude, can also be given a lesser form of punishment, as mentioned in Para 521 (5) of the Sastry Award or Clause 19.6 of the Settlement, and be continued in service the Statutory prohibition in Section 10 (1) (b) (i) of the Act cannot be ignored. The language employed therein is unambiguous and clear. It prohibits an employee, who has been convicted for an offence involving moral turpitude to be continued in the service of a banking company. The fact that the petitioner has been convicted of an offence involving moral turpitude is not in dispute. The charges, of which the petitioner was held guilty, relate to misappropriation of funds and falsification of accounts which, undoubtedly, are offences involving moral turpitude. The only question which necessitates examination is whether the petitioner could have been imposed a punishment, lesser than that of

dismissal from service, while at the same time complying with the statutory requirements of Section 10 (1) (b) (i) of the Act. In other words could an order imposing a punishment, other than that of dismissal from service, be passed which also results in cessation of employment. It is in this context that a reference is required to be made to paragraph 521 (5) of the Sastry Award and Clause 19.6 of the Settlement. The only two punishments which could have been imposed under these provisions, which would also satisfy the requirements of Section 10 (1) (b) (i) of the Act, are (1) dismissal without notice or (2) have the employee's misconduct condoned and be merely discharged. It is in this context, that we are required to examine the contention as to whether the failure on the part of the respondent-bank to put the petitioner on notice with regards the proposed punishment is in violation of the procedural requirements prescribed under the Sastry Award and the Settlement or of principles of natural justice.

As rightly pointed out by Sri P.R. Prasad, learned counsel for the respondent-bank, the requirement of an employee being given a hearing regarding the nature of proposed punishment, in case any charge is established against him, is to be found under Clauses 19.12 of the Settlement which relates to the procedure to be followed by the bank in case it decides to take disciplinary action against an employee. In the present case, while the bank,

initially intended to proceed with the disciplinary enquiry, it subsequently chose to impose on the petitioner the punishment of dismissal from service consequent upon his conviction for an offence involving moral turpitude. The requirement of putting the petitioner on notice as contemplated under Clause 19.12 of the Settlement has, therefore, no application to the facts of the present case.

Even if it were to be held that, in the absence of any such requirement under the relevant regulations governing service conditions of employees, such a requirement must be held to be a facet of principles of natural justice, the test, eventually, is one of prejudice **[MANAGING DIRECTOR, ECIL V. B. KARUNAKA** [1] **and STATE BANK OF PATIALA V. S.K. SHARMA** [2] **]**. Can the petitioner, in the facts and circumstances of the present case, be said to have suffered prejudice, on account of his not being given an opportunity of being heard on the proposed punishment? The answer can only be in the negative. As noticed earlier, the only two punishments, under para 521 (5) of the Sastry Award and Clause 19.6 of the Settlement, which would result in cessation of employment, thereby complying with the prescription under Section 10 (1) (b) (i) of the Act are; (a) dismissal without notice and (e) have the employee's misconduct condoned and be merely discharged. Para 521 (5) (e) of the Sastry Award and Clause 19.6

(e) of the Settlement enable an employee to be discharged on his misconduct being condoned. It defies reason that an employee, who has been convicted by a criminal court of an offence involving moral turpitude of misappropriation of funds and falsification of accounts, which order has attained finality on its being affirmed by the Supreme Court in Criminal Appeal No.427 of 2002 dated 1.4.2002, is entitled to have his misconduct condoned and be discharged from service. The action of the competent authority, in not doing so, cannot be faulted nor can the petitioner, in the facts and circumstances of the present case, seek a Mandamus from this court to the competent authority to exercise discretion under Clause 19.6 (e) of the Settlement or Para 521 (5) (e) of the Sastry Award.

Sri K. Gopala Krishna Murthy, learned counsel for the petitioner, would however contend that the word 'and' in para 521 (5) (e) of the Sastry Award and Clause 19.6 (e) of the Settlement should be read as disjunctive and not conjunctive. I am afraid, I cannot agree. "Discharge" under para 521 (5) (e) of the Sastry Award and Clause 19.6 (e) of the Settlement is discharge simplicitor and can only be imposed if the misconduct is condoned. Reading the word "and" as "or" would render the very provision meaningless. An employee, under para 521 (5) (e) of the Sastry Award and Clause 19.6 (e) of the Settlement, can only

be discharged if his misconduct is condoned. The action of the competent authority in not doing so and instead dismissing the petitioner from service without notice, in the facts and circumstances of the present case, must necessarily be upheld. Para 521 (5) (e) of the Sastry Award and Clause 19.6 (e) of the Settlement enable an employee to be dismissed from service without notice. Imposition of such a punishment by the competent authority, does not necessitate giving the petitioner an opportunity of being heard in this regard. The only punishment which can be imposed under para 521 (5) of the Sastry Award and Clause 19.6 of the Settlement, which would also satisfy the requirements of Section 10 (1) (b) (i) of the Act is under Clause (a) alone i.e. the punishment of dismissal from service. In any view of the matter, the impugned order dated 25.10.1997 must necessarily be upheld.

The writ petition fails and is accordingly dismissed. No costs.

RAMESH RANGANATHAN, J

DATE: 20.3.2007

CVM

[1] . 1993 (4) SCC 727

[2] . 1996 (3) SCC 364